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March 22, 2002

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

William F. Caton, Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Unified Intercarrier Compensation, CC Docket No. 01-92  
Wireless Access Charges, WT Docket No. 01-316  
Notification of *Ex Parte* Presentations

Dear Mr. Caton:

On March 21, 2002, representatives of the Missouri Companies met with Common Carrier Bureau and Wireless Telecommunications Bureau staff, and with legal advisors of several Commissioners, to discuss aspects of the referenced proceedings as they may affect rural independent telephone companies.

Missouri Companies' representatives Brian Cornelius of Citizens Telephone Company (Higginsville, Mo.), Rod Cotton of Grand River Mutual Telephone Corp. (Princeton, Mo.), W.E. ("Trip.") England III, Esq., Brydon, Swearengen & England (Jefferson City, Mo.), Robert Schoonmaker of GVNW Consulting (Colorado Springs, Co.), and Sylvia Lesse and Steven E. Watkins of Kraskin, Lesse & Cosson, LLP (Washington, D.C.) met jointly with the following Common Carrier Bureau and Wireless Telecommunications Bureau staff members:

Dorothy Attwood, Chief, Common Carrier Bureau ("CCB")  
Jeffrey Carlisle, Senior Deputy Chief, CCB  
Jane Jackson, Associate Chief, CCB  
Tamara Preiss, Chief, Competitive Pricing Division of the CCB ("CPD")  
Steven Morris, Attorney Advisor, CPD  
Victoria Schlesinger, Attorney Advisor, CPD

Kris Monetith, Chief, Policy Division ("PD"), Wireless Telecommunications Bureau  
Jared Carlson, Deputy Chief, PD  
Elias Johnson, Attorney Advisor, PD  
Greg Guice, Attorney Advisor, PD  
Gregory Vadas, Attorney Advisor, PD

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Missouri Companies representatives Cornelius, Cotton, England, Schoonmaker and Lesse met with Matthew Brill, Legal Advisor to Commissioner Kathleen Q. Abemathy and Daniel Gonzalez. Senior Legal Advisor to Commissioner Kevin J. Martin.

Missouri Companies representatives Cornelius, England, Schoonmaker and Watkins met with Jordon Goldstein, Senior Legal Advisor to Commissioner Michael J. Copps.

In each meeting, the Missouri Companies representatives discussed matters placed in the record by other parties specifically referencing the Missouri Companies, and discussed the Missouri Companies' positions in the referenced dockets, as reflected in the attached outline. The Missouri Companies are also listed on the attachment.

Please refer any questions or correspondence concerning this matter to the undersigned.

Respectfully submitted,

ylvia

cc: Dorothy Attwood  
Jeffrey Carlisle  
Jane Jackson  
Tamara Preiss  
Steven Morris  
Victoria Schlesinger  
Kris Monetith  
Jared Carlson  
Elias Johnson  
Greg Guice  
Gregory Vadas  
Matthew Brill  
Daniel Gonzalez  
Jordon Goldstein

## EXCHANGE OF TRAFFIC BETWEEN WIRELESS CARRIERS AND MISSOURI'S SMALL LECs

### 1) Summary

- a Wireless carriers terminate traffic to small LECs in Missouri via the intermediate facilities of SWBT.
- a This wireless traffic is commingled with interchange traffic and delivered over "access" facilities and connections.
- a Until February, 1998, SWBT paid access charges on this wireless traffic at which time it was relieved of that obligation by the MoPSC.
- MoPSC now requires wireless carriers to compensate third party LECs for this traffic and has specifically directed them not to send traffic to third party LECs without a reciprocal compensation agreement.
- a Wireless carriers continue to send traffic to third party LECs without any agreement to do so arguing that a de facto bill and keep arrangement exists in lieu of an agreement.
- a In February, 2001, MoPSC approved small LECs wireless termination tariffs three (3) years after it directed wireless carriers to establish reciprocal compensation agreements so that small LECs could begin to get compensated and give wireless carriers an incentive to pursue compensation agreements with small LECs.
- a There is no balance of traffic between small LECs and wireless carriers because calling from small LEC landline customers to wireless customers is a toll (eg. 1+ dialed) call carried by SWBT (until October, 1999) or IXC.
- a Wireless carriers continue to fail to pursue negotiation/arbitration to complete agreements but expend resources appealing MoPSC decision and lobbying FCC.

### 2) Indirect Interconnection

- 1) wireless carrier → SWBT → small LEC

SWBT mingles traffic with IXC and intraLATA traffic on a common *trunk* group.

Small LEC cannot distinguish wireless traffic from other traffic.

Small LEC doesn't get notification of new carriers.

SWBT records traffic and provides a paper monthly summary report.

2) small LEC -> IXC -> wireless Carrier

SWBT does not provide intrastate toll service in Small LEC area.

1+ dialing based on Small LEC local calling area from state tariffs.

1+ traffic directed to customers presubscribed IXC

Traffic is between IXC and CMRS provider, not LEC and CMRS provider.

3) **History of Relationship**

A) wireless to wireline (small LEC)

- prior to TA 1996: per SWBT intrastate wireless interconnection tariff
- post TA 1996:
  - per interconnection agreement with SWBT; and
  - SWBT wireless tariff

B) wireline (small LEC) to wireless

- prior to elimination of the Missouri Primary Toll Camer (PTC) Plan and implementation of intraLATA dialing parity (ILDPA) in October of 1999:
  - via SWBT's toll network
- after elimination of the PTC Plan and ILDP
  - via IXCs' toll networks

4) **History of Compensation Flows**

A) wireless to wireline

- delivered via SWBT's wireless tariff prior to February 5, 1998; SWBT paid terminating access to small LECs.
- delivered after February 5, 1998 via SWBT's wireless tariff or per an interconnection agreement with SWBT; small LECs have received no compensation from either SWBT or wireless carriers.
- delivered after February 19, 2001 via SWBT's wireless interconnection tariff or per an interconnection agreement with SWBT; small LECs are paid their respective wireless termination tariff rates.

2) wireline to wireless

delivered prior to elimination of the PTC Plan and ILDP, SWBT paid terminating access to wireless carriers.

delivered after elimination of the PTC Plan and ILDP, IXCs should pay terminating compensation to wireless carriers.

5) Significant Decisions of the Missouri Public Service Commission and Missouri Courts.

1) *United Telephone Company, Chariton Valley Telephone Company, and Mid-Missouri Telephone Company* complaint cases against SWBT (Cases No. TC-96-112, TC-98-251, and TC-98-340)

the Missouri PSC found that in the absence of an agreement to the contrary, SWBT was required to pay terminating compensation pursuant to access tariffs for wireless traffic terminating to United, Chariton Valley, and Mid-Missouri (per SWBT's wireless tariff).

2) *SWBT's Wireless Tariff Revision* case (Case No. TT-97-524, order issued December 23, 1997)

the Missouri PSC approved changes to SWBT's wireless tariff which eliminated SWBT's obligation to pay third-party LECs compensation for wireless traffic terminated to them via SWBT's facilities;

required wireless carriers to establish agreements with third-party LECs before sending traffic via SWBT for termination to third-party LECs;

required SWBT to be "secondarily liable" to third-party LECs if they are

not compensated by wireless carriers;

declined to decide what type of compensation was due from wireless carriers to third-party LECs and said this was “an open question.”

- 3) *Alma Telephone Company et al.* revisions of their intrastate access tariffs (Case No. TT-99-428, order issued January 27,2000)

Missouri PSC rejected revisions to several small LECs’ intrastate access tariffs attempting to clarify that their access tariffs applied to terminating wireless (and CLEC) traffic in the absence of an agreement pursuant to the TA 1996.

Missouri Public Service Commission found that access does not apply to intraMTA wireless traffic.

- 4) Appeal of Missouri Public Service Commission decision in *Alma Telephone* case.

Circuit Court of Cole County, Missouri (Case No. 00CV323379, *Order* issued November 1,2000) reversed Missouri PSC’s decision that access could not apply to intraMTA traffic. The *Order* stated:

- (1) as a matter of law, access could apply in the absence of an agreement per TA 1996, and
- (2) the Missouri PSC’s decision was not supported by sufficient findings of fact.

Missouri Court of Appeals (Western District) (Case No. WD 59277, 62 S.W.3d 545, issued Oct. 30,2001) affirmed the Circuit Court opinion that the Missouri PSC’s decision was unsupported by sufficient findings of fact. Accordingly, the court remanded the case to the Missouri PSC where it currently awaits further action.

- 5) *Mark Twain Rural Telephone et al.* intrastate wireless termination tariff case (Missouri PSC Case No. TT-2001-139, order issued February 8,2001)

In approving the wireless termination tariffs of a number of small LECs, the Missouri PSC found that tariffs were not prohibited by federal or state law as:

SWBT has had, and continues to have, such a tariff, and

the tariffs expressly provide that they will be superseded by an agreement per TA 1996.

Missouri PSC approved wireless termination rates for each small LEC based on sum of intrastate traffic sensitive access rates plus 2¢ contribution to common line.

Tariff rates, on average, are considerably less than small LECs' forward-looking costs as developed by the HAI model. (Average TS rates of \$0.04 compared to HAI cost of \$0.098. SWBT cost of \$0.006 using HAI.)

Missouri PSC believed that tariffs were necessary in order to give wireless carriers the incentive to negotiate agreements with small LECs.

6) Appeal of *Mark Twain* tariff case

- On November 26, 2001, the Cole County Circuit Court affirmed the Missouri PSC's decision in the *Murk Twain* tariff case.

6) **Missouri Small LECs have not refused to negotiate with wireless carriers.**

Missouri's small LECs have negotiated with a number of wireless carriers.

Negotiations failed not because the small LECs refused to negotiate but because small LECs refused to capitulate to wireless carriers' demands.

Negotiations have generally "stalemated" over three issues:

- (1) the appropriate reciprocal compensation rate for the exchange of traffic;
- (2) the extent of the small LECs' obligation to pay reciprocal compensation on calls carried by IXCs (e.g. 1+ dialed) to wireless carriers; and
- (3) the extent of the wireless carriers' obligation to pay for "past" traffic which they terminated to the small LECs but for which they have not paid anything.

Not one wireless carrier has sought arbitration by the Missouri PSC when negotiations failed. In fact, a group of small LECs attempted to invoke arbitration with one wireless carrier, but their petition was dismissed on a procedural (timing)

issue which was raised by the wireless carrier

7) **The extent of the small LECs' obligation to pay reciprocal compensation on toll (e.g. 1+ dialed) calls which their customers must make to reach the wireless customer.**

Because of the indirect interconnection chosen by the wireless carriers, the wireless NXXs are located outside the local calling scope of the small LEC

The small LECs' service areas and their calling scopes are governed by their certificates and tariffs, as approved by the Missouri PSC.

The FCC's *Interconnection Order*<sup>1</sup> (paragraph 1043) recognized that traffic between CMRS providers and LECs carried by an IXC were subject to access charges, not reciprocal compensation.

Small LECs' customers have access to toll providers in accordance with dialing parity rules established by the FCC and the Missouri PSC.

Thus, toll (1+ dialed) calls to wireless customers are not "LEC to CMRS" calls but "IXC to CMRS" calls.

The FCC's *Interconnection Order* contained no discussion of changes in network routing, dialing patterns, or exceptions to 1+ presubscription requirements in addressing traffic from LECs to CMRS providers.

It is the IXC, not the LEC, that carries the call, bills the customer, and has responsibility for paying the originating and terminating carriers for their origination and termination services.

This issue was initially raised by Sprint PCS in its informal complaint against Missouri Small LECs (File No. IC-98-16655).

The FCC did not decide the issue, and Sprint never formally pursued it before the FCC or the Missouri PSC.

It now appears that Sprint PCS has done an about-face and believes that it is the IXC who is responsible for paying access charges on traffic it terminates to wireless carriers. (*AT&T v. Sprint Spectrum d/b/a Sprint PCS*, WT Docket No. 01-

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<sup>1</sup> *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Release No. 96-325, *First Report and Order*, rel. Aug. 8, 1996.



316)

Note: This IXC delivered/traffic for which Sprint PCS is seeking access compensation includes intraMTA traffic.

8) **Issues regarding compensation where no agreements exist.**

- Wireless carriers argue that “bill and keep” applies until **an** agreement is negotiated. Obviously to their financial and competitive advantage to not pay for traffic termination.
- Wireless carriers have no incentive to request agreements with small LECs for indirect connection. Traffic is put on the network through BOC tandem and terminated without cost.
- TA96 says “bill and keep” only when approved by state PSC and traffic is balanced.
- Traffic between small LECs and CMRS providers is not balanced under any traffic definition.

## **THE MISSOURI COMPANIES**

BPS Telephone Company  
Cass County Telephone Company  
Citizens Telephone Company  
Craw-Kan Telephone Cooperative, Inc.  
Farber Telephone Company  
Fidelity Telephone Company  
Granby Telephone Company  
Grand River Mutual Telephone Corp.  
Green Hills Telephone Corp.  
Holway Telephone Company  
Iamo Telephone Company  
Kingdom Telephone Company  
KLM Telephone Company  
Lathrop Telephone Company  
McDonald County Telephone Company  
Mark Twain Rural Telephone Company  
Miller Telephone Company  
New Florence Telephone Company  
Peace Valley Telephone Co., Inc.  
Rock Port Telephone Company